

REPORT

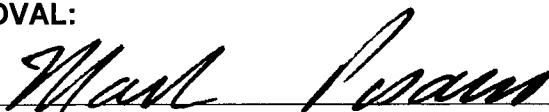
TO: Community, Economic and Human Development Committee

FROM: Jacob Lieb, Acting Lead Regional Planner, (213) 236-1921, lieb@scag.ca.gov

SUBJECT: Housing Legislation

DATE: May 6, 2004

EXECUTIVE DIRECTOR'S APPROVAL:



RECOMMENDED ACTION:

Support AB 2158 (Lowenthal) and AB 2348 (Mullin).

BACKGROUND:

Beginning in August 2004, staff has been providing monthly updates to the CEHD Committee on the progress of the Statewide Housing Element Working Group, and other legislative issues relating to the conduct of the Regional Housing Needs Assessment (RHNA). As of March 16, the working group has formally concluded its deliberations and provided consensus recommendations to the Legislature. These recommendations cover regional issues, as discussed below, which are included in AB 2158 (attached).

In negotiating these issues within the Working Group, staff was guided by SCAG's Housing Element Reform Priorities, adopted by the Regional Council in January 2002 (attached). We believe the result is the best possible fit with these priorities within a consensus process. The responsiveness to priorities is discussed briefly as follows:

1. Basing the RHNA on the Regional Transportation Plan
The consensus agreement calls for the COG to request use of the RTP forecast and timelines as the basis for the regional housing need determination.
2. Addressing inconsistencies in state policies affecting local land use
The allocation methodology within the proposed new process would call for the COG to account for the ways in which State land use policies affect the ability of local governments to develop new housing.
3. Allow consideration of extenuating circumstances at the local level
The consensus agreement calls for the COG to use a allocation method incorporating specific factors. These factors quantify the opportunities and constraints for housing development affecting local governments.
4. Provide for incentives to address housing need
The working group recommendations do not provide any direct incentives for addressing housing need, a predictable result given the State budget crisis. However, staff is hopeful that on-going negotiations will allow for a performance-based local certification option, that would provide some incentive to local governments.



REPORT

Also of note, the recommendations would create refinements in the sub-regional delegation program. The proposed new program would call for sub-regions accepting delegation to assume the authorities and responsibilities otherwise given to the regional COG, and would allow sub-regions to seek reimbursement.

The working group's recommendations on other (non-regional issues) are included in AB 2348 (attached). This bill includes language that would provide clarity on how local governments are to identify sites, and how to ensure that sites are available for housing, within the context of the Housing Element.

Finally, the group failed to reach consensus on various issues including a proposed program for local certification of Housing Elements, and on penalties for Housing Element non-compliance. Several members of the Working Group are continuing discussions around these issues, and staff will continue to report on any progress made.

ATTACHMENT:

Text of AB 2158

FISCAL IMPACT:

SCAG's activities in pursuing legislation are included in the agency Overall Work Program for FY03-04. The recommended action would not incur any additional costs.

ATTACHMENT 1

SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS HOUSING ELEMENT REFORM PRIORITIES

ADOPTED BY REGIONAL COUNCIL, DECEMBER 13, 2001

The Southern California Association of Governments (SCAG) believes that reform of the State of California's Housing Element and Regional Housing Needs Assessment Processes is badly needed. The process, as envisioned under current law (CA Govt. Code Section 65583-4), is complex, needlessly contentious, and lacks credibility among local governments and others. If the Housing Element process is to fulfill its legislative intent, to ensure adequate supplies of housing, the reforms discussed below should be considered and made by the Legislature. **Note, these proposals are in prioritized order, with SCAG's proposed highest priority listed first.**

Housing Element Reform Priority Number 1:

Base Regional Housing Need Determinations on Regional Transportation Plan (RTP) forecasts solely.

Under current law, the Department of Housing and Community Development (HCD) issues a preliminary need assignment to regional Councils of Government (COGs) based on Department of Finance (DOF) projections. Through a consultation process, the COG may substitute its own transportation forecast, at HCD's discretion. HCD allows this substitution, generally, if the regional number is reasonably close to the State number, or if a reconciliation of the two numbers can be negotiated (e.g. the region adjusts its number to meet or come close to the DOF number).

SCAG proposes allowing COGs to use their own regionally derived transportation forecasts as the basis for housing need determinations, without reconciling to a DOF number. HCD would be able to question the region's forecast to a defined and limited extent. HCD's challenge of the appropriateness of the region's numbers should be resolved promptly, and in a manner prescribed in statute, preferably by a third party. Further, the schedule for RHNA and Housing Element updates should be revised to accommodate best use of RTP forecasts, which are updated every 3 years. This proposal would reset the Housing Element schedule to a six year cycle (from five), beginning at the conclusion of the current round of updates.



Housing Element Reform Priority Number 2:

Require the State to address inconsistent and contradicting mandates linked to housing, i.e., Coastal commission, transportation planning, and water policy requirements.

Under current housing law, communities are required to enact land-use policies that accommodate new housing construction to meet the need assignment. Other State laws and policies can prohibit or significantly constrain housing in certain conditions, notably when the community cannot guarantee water availability, or provide for new schools.

SCAG proposes that the State be required to demonstrate consistency among statewide plans and policies. Consistency should be shown among issues including, but not limited to, endangered species and habitat planning, water planning and other infrastructure issues, and provision of adequate school facilities. This could be accomplished through the Governor's Office of Planning and Research.

Housing Element Reform Priority Number 3:

Allow communities to address the conflicts between housing allocations and extenuating circumstances at the local level i.e., land limitations, cost of land, agricultural lands, etc.

Current housing law requires communities to designate sites for the construction of new housing to meet the needs of a growing population and employment base. Increasingly, local jurisdictions cannot identify required sites for new housing due to land use limitations that are beyond their control. In older, established urban areas, communities have few parcels that are unbuilt, and those that they have are often entitled, contaminated, or otherwise restricted, allowing the locality little or no opportunity to create new housing. In less developed, outlying areas, often the available land is subject to endangered species or other environmental restrictions. As such, communities should be afforded more flexibility in how housing need is allocated and in how need is met.

SCAG supports various proposals, including streamlining trade and transfer provisions. Further proposals call for allowing alternative methods of meeting need (apart from finding sites for new construction) including rehabilitation, conversion, and creation of accessory units. **Further, SCAG proposes** that regional COGs be empowered to identify various types of housing constraints as part of the RHNA process, and make adjustments to future need determinations accordingly, including use of expanded trade and transfer provisions.

Housing Element Reform Priority Number 4:

Create or augment incentives to local governments for building and planning for housing.

Communities are required to have a Housing Element that conforms to State law. The lack of a conforming Housing Element can leave a jurisdiction susceptible to legal challenges from developers, housing advocates and others. Conversely, communities are not rewarded for meeting need assignments, or for taking on additional need. There are two specific disincentives under current law for aggressively addressing housing need, (1) a lack of State and other funding to produce affordable housing that is linked to Housing Element planning efforts, and (2), a State fiscal scheme whereby new housing development creates additional expense for a local agency, and strong incentives exist for other land development purposes, particularly retail. As such, the housing need assignment process is focused on achieving the lowest need number possible for most localities. We believe this is contrary to the original legislative purpose.

SCAG proposes creating new funds, and augmenting existing programs, to act as incentives for housing planning and production. Incentive proposals for housing planning and production involve (a) tying existing housing funds allocated by the State to the housing needs determination process, and (b) creating new sources of financing to reward pro-housing local policies. These funds can be pooled and allocated by regional COGs as part of the RHNA, and can be used to facilitate trades and transfers. A further iteration of this proposal would allow localities to “buy out” of a portion of their need assignments. The funds used to opt out would then be used to subsidize housing elsewhere in a region or sub-region. Further, legislation should be aimed promoting “revenue neutrality” for local governments when new housing is produced. This can be accomplished by a State-to-local property tax shift where new housing is developed consistent with planning goals.

♦ Other issues under consideration

SCAG does not, at this time, assign priority to other issues that have been, or may be part of discussions pertaining to Housing Element and RHNA reform. However, the region is prepared to support or oppose various proposals that may be forwarded by others. Notably:

- SCAG will support efforts to clarify Housing Element review and compliance standards. SCAG is aware that the Housing Element review process, as currently administered, can be burdensome,

confusing, and inconsistent for local governments. SCAG has identified this is as primarily a local issue, but is prepared to support, on behalf of its member cities and counties, proposals that would better define the process in statute.

- SCAG is not supportive of any additional penalties for Housing Element non-compliance.
- SCAG will consider support or oppose positions on other proposals as they are brought forward.

BILL NUMBER: AB 2158 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 12, 2004

INTRODUCED BY Assembly Member Lowenthal

FEBRUARY 18, 2004

An act to amend Section 65582 of , to add Sections 65584.01, 65584.02, 65584.03, 65584.04, 65584.05, 65584.06, and 65584.07 to, and to repeal and add Section 65584 of, the Government Code, relating to ~~local planning~~ general plans

LEGISLATIVE COUNSEL'S DIGEST

AB 2158, as amended, Lowenthal. ~~Local planning: housing~~
Housing elements : regional housing need

(1) Existing law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. One part of the housing element is an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs. The assessment includes the locality's share of the regional housing need. That share is determined by the appropriate council of governments, subject to revision by the Department of Housing and Community Development. A city, county, or city and county is required to submit a draft housing element or draft amendment to its housing element to the department for a determination of whether the draft complies with state law governing housing elements.

This bill would revise the procedures for determining shares of the existing and projected regional housing need for cities, counties, and subregions at all income levels, as specified. By imposing additional duties upon local officials, this bill would create a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these

statutory provisions.

~~The Planning and Zoning Law requires a city or county to adopt a general plan for land use development that includes, among other things, a housing element. It also requires the Department of Housing and Community Development to determine the regional share of the statewide housing need, and each council of governments to determine the existing and projected housing need for its region.~~

~~This bill would define "existing and projected housing need" for purposes of these housing element requirements.~~

Vote: majority. Appropriation: no. Fiscal committee:

~~no~~ yes . State-mandated local program:

~~no~~ yes .

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

~~SECTION 1. Section 65582 of the Government Code is~~

SECTION 1. Section 65582 of the Government Code is amended to read:

65582. As used in this article:

(a) "Community," "locality," "local government," or "jurisdiction" means a city, city and county, or county.

(b) "Council of governments" means a single or multicounty council created by a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 1 of Title 1.

(c) "Department" means the Department of Housing and Community Development.

(d) "Housing element" or "element" means the housing element of the community's general plan, as required pursuant to this article and subdivision (c) of Section 65302.

~~(e) "Low- and moderate-income households" means persons and families of low or moderate incomes as defined by Section 50093 of the Health and Safety Code.~~

SEC. 2. Section 65584 of the Government Code is repealed.

~~65584. (a) For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing needs includes that share of the housing need of persons at all income levels within the area significantly affected by a general plan of the city or county.~~

~~The distribution of regional housing needs shall, based upon available data, take into consideration market demand for housing, employment opportunities, the availability of suitable sites and public facilities, commuting patterns, type and tenure of housing need, the loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions, and the housing needs of farmworkers. The distribution shall seek to reduce the concentration of lower income households in cities or counties~~

~~that already have disproportionately high proportions of lower income households. Based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, and in consultation with each council of governments, the Department of Housing and Community Development shall determine the regional share of the statewide housing need at least two years prior to the second revision, and all subsequent revisions as required pursuant to Section 65588. Based upon data provided by the department relative to the statewide need for housing, each council of governments shall determine the existing and projected housing need for its region. Within 30 days following notification of this determination, the department shall ensure that this determination is consistent with the statewide housing need. The department may revise the determination of the council of governments if necessary to obtain this consistency. The appropriate council of governments shall determine the share for each city or county consistent with the criteria of this subdivision and with the advice of the department subject to the procedure established pursuant to subdivision (c) at least one year prior to the second revision, and at five-year intervals following the second revision pursuant to Section 65588. The council of governments shall submit to the department information regarding the assumptions and methodology to be used in allocating the regional housing need. As part of the allocation of the regional housing need, the council of governments, or the department pursuant to subdivision (b), shall provide each city and county with data describing the assumptions and methodology used in calculating its share of the regional housing need. The department shall submit to each council of governments information regarding the assumptions and methodology to be used in allocating the regional share of the statewide housing need. As part of its determination of the regional share of the statewide housing need, the department shall provide each council of governments with data describing the assumptions and methodology used in calculating its share of the statewide housing need. The council of governments shall provide each city and county with the department's information. The council of governments shall provide a subregion with its share of the regional housing need, and delegate responsibility for providing allocations to cities and a county or counties in the subregion to a subregional entity if this responsibility is requested by a county and all cities in the county, a joint powers authority established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, or the governing body of a subregional agency established by the council of governments, in accordance with an agreement entered into between the council of governments and the subregional entity that sets forth the process, timing, and other terms and conditions of that delegation of responsibility.~~

~~(b) For areas with no council of governments, the department shall determine housing market areas and define the regional housing need for cities and counties within these areas pursuant to the provisions for the distribution of regional housing needs in subdivision (a).~~

~~If the department determines that a city or county possesses the capability and resources and has agreed to accept the responsibility, with respect to its jurisdiction, for the identification and determination of housing market areas and regional housing needs, the department shall delegate this responsibility to the cities and counties within these areas.~~

~~(c) (1) Within 90 days following a determination of a council of governments pursuant to subdivision (a), or the department's determination pursuant to subdivision (b), a city or county may propose to revise the determination of its share of the regional housing need in accordance with the considerations set forth in subdivision (a). The proposed revised share shall be based upon available data and accepted planning methodology, and supported by adequate documentation.~~

~~(2) Within 60 days after the time period for the revision by the city or county, the council of governments or the department, as the case may be, shall accept the proposed revision, modify its earlier determination, or indicate, based upon available data and accepted planning methodology, why the proposed revision is inconsistent with the regional housing need.~~

~~(A) If the council of governments or the department, as the case may be, does not accept the proposed revision, then the city or county shall have the right to request a public hearing to review the determination within 30 days.~~

~~(B) The city or county shall be notified within 30 days by certified mail, return receipt requested, of at least one public hearing regarding the determination.~~

~~(C) The date of the hearing shall be at least 30 days from the date of the notification.~~

~~(D) Before making its final determination, the council of governments or the department, as the case may be, shall consider comments, recommendations, available data, accepted planning methodology, and local geological and topographical restraints on the production of housing.~~

~~(3) If the council of governments or the department accepts the proposed revision or modifies its earlier determination, the city or county shall use that share. If the council of governments or the department grants a revised allocation pursuant to paragraph (1), the council of governments or the department shall ensure that the current total housing need is maintained. If the council of governments or the department indicates that the proposed revision is inconsistent with the regional housing need, the city or county shall use the share that was originally determined by the council of governments or the department.~~

~~(4) The determination of the council of governments or the department, as the case may be, shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.~~

~~(5) The council of governments or the department shall reduce the share of regional housing needs of a county if all of the following conditions are met:~~

~~— (A) One or more cities within the county agree to increase its share or their shares in an amount that will make up for the reduction.~~

~~— (B) The transfer of shares shall only occur between a county and cities within that county.~~

~~— (C) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.~~

~~— (D) The council of governments or the department, whichever assigned the county's share, shall have authority over the approval of the proposed reduction, taking into consideration the criteria of subdivision (a).~~

~~— (6) The housing element shall contain an analysis of the factors and circumstances, with all supporting data, justifying the revision. All materials and data used to justify any revision shall be made available upon request by any interested party within seven days upon payment of reasonable costs of reproduction unless the costs are waived due to economic hardship.~~

~~— (d) (1) In the event an incorporation of a new city occurs after the council of governments, or the department for areas with no council of governments, has made its final allocation under this section, the city and county may reach a mutually acceptable agreement on a revised determination and report the revision to the council of governments and the department, or to the department for areas with no council of governments. If the affected parties cannot reach a mutually acceptable agreement, then either party may request the council of governments, or the department for areas with no council of governments, to consider the facts, data, and methodology presented by both parties and make the revised determination. The revised determination shall be made within one year of the incorporation of the new city based upon the methodology described in subdivision (a) and shall reallocate a portion of the affected county's share of regional housing needs to the new city. The revised determination shall neither reduce the total regional housing need nor change the previous allocation of the regional housing needs assigned by the council of governments or the department, where there is no council of governments, to other cities within the affected county.~~

~~— (2) Except as provided in paragraph (3), any ordinance, policy, or standard of a city or county that directly limits, by number, the building permits that may be issued for residential construction, or limits for a set period of time the number of buildable lots that may be developed for residential purposes, shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.~~

~~— (3) Paragraph (2) does not apply to any city or county that imposes a moratorium on residential construction for a specified period of time in order to preserve and protect the public health and safety. If a moratorium is in effect, the city or county shall, prior to a revision pursuant to subdivision (c), adopt findings that~~

~~specifically describe the threat to the public health and safety and the reasons why construction of the number of units specified as its share of the regional housing need would prevent the mitigation of that threat.~~

~~(e) Any authority to review and revise the share of a city or county of the regional housing need granted under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.~~

~~(f) A fee may be charged to interested parties for any additional costs caused by the amendments made to subdivision (c) by Chapter 1684 of the Statutes of 1984 reducing from 45 to 7 days the time within which materials and data shall be made available to interested parties.~~

~~(g) Determinations made by the department, a council of governments, or a city or county pursuant to this section are exempt from the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code.~~

SEC. 3. Section 65584 is added to the Government Code, to read:

65584. (a) (1) For the fourth and subsequent revisions of the housing element pursuant to Section 65588, the department shall determine the existing and projected need for housing for each region pursuant to this article. For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing need shall include that share of the housing need of persons at all income levels within the area significantly affected by the general plan of the city or county.

(2) While it is the intent of the Legislature that cities, counties, and cities and counties should undertake all necessary actions to encourage, promote, and facilitate the development of housing to accommodate the entire regional housing need, it is recognized, however, that future housing production may not equal the regional housing need established for planning purposes.

(b) The department, in consultation with each council of governments, shall determine each region's existing and projected housing need pursuant to Section 65584.01 at least two years prior to the scheduled revision required pursuant to Section 65588. The appropriate council of governments, or for cities and counties without a council of governments, the department, shall adopt a final regional housing need plan that allocates a share of the regional housing need to each city, county, or city and county at least one year prior to the scheduled revision for the region required by Section 65588. The allocation plan prepared by a council of governments shall be prepared pursuant to Sections 65584.04 and 65584.05 with the advice of the department.

(c) Notwithstanding any other provision of law, the due dates for the determinations of the department or for the councils of governments, respectively, regarding the regional housing need may be extended by not more than 60 days if the extension will enable

access to more recent critical population or housing data from a pending or recent release of the United States Census Bureau or the Department of Finance. If the due date for the determination of the department or the council of governments is extended for this reason, the department shall extend the corresponding housing element revision deadline pursuant to Section 65588 by not more than 60 days.

(d) The regional housing needs allocation plan shall be consistent with all of the following objectives:

(1) Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which shall result in each jurisdiction receiving an allocation of units for low and very low income households.

(2) Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, and the encouragement of efficient development patterns.

(3) Promoting an improved intraregional relationship between jobs and housing.

(4) Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category, as compared to the countywide distribution of households in that category from the most recent decennial United States census.

(e) For purposes of this section, "household income levels" are as determined by the department as of the most recent decennial census pursuant to the following code sections:

(1) Very low incomes as defined by Section 50105 of the Health and Safety Code.

(2) Lower incomes, as defined by Section 50079.5 of the Health and Safety Code.

(3) Moderate incomes, as defined by Section 50093 of the Health and Safety Code.

(4) Above moderate incomes are those exceeding the moderate income level of Section 50093 of the Health and Safety Code.

(f) A fee may be charged to interested parties for any additional costs caused by the amendments made to subdivision (c) by Chapter 1684 of the Statutes of 1984 reducing from 45 to seven days the time within which materials and data shall be made available to interested parties.

(g) Determinations made by the department, a council of governments, or a city or county pursuant to this section are exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

SEC. 4. Section 65584.01 is added to the Government Code, to read:

65584.01. (a) For the fourth and subsequent revision of the housing element pursuant to Section 65588, the department, in consultation with each council of governments, shall determine the existing and projected need for housing for each region in the

following manner:

(b) The department's determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, and consultation with each council of governments. If the total regional population forecast for the planning period, developed by the council of governments and used for the preparation of the regional transportation plan, is within a range of 3 percent of the total regional population forecast for the planning period over the same time period by the Department of Finance, then the population forecast developed by the council of governments shall be the basis from which the department determines the existing and projected need for housing in the region. If the difference between the total population growth projected by the council of governments and the total population growth projected for the region by the Department of Finance is greater than 3 percent, then the department and the council of governments shall meet to discuss variances in methodology used for population projections and seek agreement on a population projection for the region to be used as a basis for determining the existing and projected housing need for the region. If no agreement is reached, then the population projection for the region shall be the population projection for the region prepared by the Department of Finance as may be modified by the department as a result of discussions with the council of governments.

(c) (1) At least 26 months prior to the scheduled revision pursuant to Section 65588 and prior to developing the existing and projected housing need for a region, the department shall meet and consult with the council of governments regarding the assumptions and methodology to be used by the department to determine the region's housing needs. The council of governments shall provide data assumptions from the council's projections, including, if available, the following data for the region:

(A) Anticipated household growth associated with projected population increases.

(B) Household size data and trends in household size.

(C) The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures.

(D) The vacancy rates in existing housing stock, and the vacancy rates for healthy housing market functioning and regional mobility, as well as housing replacement needs.

(E) Other characteristics of the composition of the projected population.

(2) The department may accept or reject the information provided by the council of governments or modify its own assumptions or methodology based on this information. After consultation with the council of governments, the department shall make determinations in writing on the assumptions for each of the factors listed in subparagraphs (A) to (E), inclusive, of paragraph (1) and the methodology it shall use and shall provide these determinations to the council of governments.

(d) (1) After consultation with the council of governments, the department shall make a determination of the region's existing and projected housing need based upon the assumptions and methodology determined pursuant to subdivision (c). Within 30 days following notice of the determination from the department, the council of governments may file an objection to the department's determination of the region's existing and projected housing need with the department.

(2) The objection shall be based on and substantiate either of the following:

(A) The department failed to base its determination on the population projection for the region established pursuant to subdivision (b), and shall identify the population projection which the council of governments believes should instead be used for the determination and explain the basis for its rationale.

(B) The regional housing need determined by the department is not a reasonable application of the methodology and assumptions determined pursuant to paragraph (1) of subdivision (c). The objection shall include a proposed alternative determination of its regional housing need based upon the data items set forth in paragraph (1) of subdivision (c), including analysis of why the proposed alternative would be a more reasonable application of the methodology and assumptions determined pursuant to paragraph (1) of subdivision (c).

(3) If a council of governments files an objection pursuant to this subdivision and includes with the objection a proposed alternative determination of its regional housing need, it shall also include documentation of its basis for the alternative determination. Within 45 days of receiving an objection filed pursuant to this section, the department shall consider the objection and make a final written determination of the region's existing and projected housing need that includes an explanation of the information upon which the determination was made.

SEC. 5. Section 65584.02 is added to the Government Code, to read:

65584.02. To the extent practical, the determination of regional housing need made by the department in consultation with each council of governments should be coordinated with regional transportation planning performed by the council of governments in response to federal and state requirements. Notwithstanding this intent, and because these plans have different applications, this section should not be construed to require use of the same data, assumptions, or methodology in the regional housing need determination and the regional transportation plan.

(a) For the fourth and subsequent revisions of the housing element pursuant to Section 65588, the existing and projected need for housing may be determined for each region by the department as follows, as an alternative to the process pursuant to Section 65584.01:

(1) In a region in which at least one subregion has accepted

delegated authority pursuant to Section 65584.03, the region's housing need shall be determined at least 28 months prior to the housing element update deadline pursuant to Section 65588. In a region in which no subregion has accepted delegation pursuant to Section 65584.03, the region's housing

need shall be determined at least 24 months prior to the housing element deadline.

(2) At least six months prior to the determination of regional need, a council of governments may request the use of population and household forecast assumptions used in the regional transportation plan. For a housing element update due date pursuant to Section 65588 that is prior to January 2007, the department may approve a request that is submitted prior to December 31, 2004, notwithstanding the deadline in this section. This request shall include all of the following:

(A) Proposed data and assumptions for factors contributing to housing need beyond household growth identified in the forecast. These factors shall include allowance for vacant or replacement units, and may include other adjustment factors.

(B) A proposed planning period that is not longer than the period of time covered by the regional transportation improvement plan or plans of the region pursuant to Section 14527, but a period not less than five years, and not longer than six years.

(C) A comparison between the population and household assumptions used for the Regional Transportation Plan with population and household estimates and projections of the Department of Finance.

The council of governments may include a request to extend the housing element deadline pursuant to Section 65588 to a date not to exceed two years, for the purpose of coordination with the scheduled update of a regional transportation plan pursuant to federal law.

(3) The department shall consult with the council of governments regarding requests submitted pursuant to paragraph (2) of subdivision (a). The department may seek advice and consult with the Demographic Research Unit of the Department of Finance, the State Department of Transportation, a representative of a contiguous council of governments, and any other party as deemed necessary. The department may request that the council of governments revise data, assumptions, or methodology to be used for the determination of regional housing need, or may reject the request submitted pursuant to paragraph (2) of subdivision (a). Subsequent to consultation with the council of governments, the department will respond in writing to requests submitted pursuant to paragraph (1) of subdivision (a).

(4) If the council of governments does not submit a request pursuant to subdivision (a), or if the department rejects the request of the council of governments, the determination for the region shall be made pursuant to Sections 65584 and 65584.01.

SEC. 6. Section 65584.03 is added to the Government Code, to read:

65584.03. (a) At least 28 months prior to the scheduled housing element update required by Section 65588, at least two or more cities

and a county, or counties, may form a subregional entity for the purpose of allocation of the subregion's existing and projected need for housing among its members in accordance with the allocation methodology established pursuant to Section 65584.04. The purpose of establishing a subregion shall be to recognize the community of interest and mutual challenges and opportunities for providing housing within a subregion. A subregion formed pursuant to this section may include a single county and each of the cities in that county or any other combination of geographically contiguous local governments and shall be approved by the adoption of a resolution by each of the local governments in the subregion as well as by the council of governments. All decisions of the subregion shall be approved by vote as provided for in rules adopted by the local governments comprising the subregion or shall be approved by vote of the county or counties, if any, and the majority of the cities with the majority of population within a county or counties.

(b) Upon formation of the subregional entity, the entity shall notify the council of governments of this formation. If the council of governments, or the department where there is no council of governments, has not received notification from an eligible subregional entity at least 27 months prior to the scheduled housing element update required by Section 65588, the council of governments, or the department where there is no council of governments, shall implement the provisions of Sections 65584 and 65584.04. The delegate subregion and the council of governments shall enter into an agreement that sets forth the process, timing, and other terms and conditions of the delegation of responsibility by the council of governments to the subregion.

(c) At least 25 months prior to the scheduled revision, the council of governments, or the department where there is no council of governments, shall determine the share of regional housing need assigned to each delegate subregion. The share or shares allocated to the delegate subregion or subregions by a council of governments shall be in a proportion consistent with the distribution of households assumed for the comparable time period of the applicable regional transportation plan. Prior to allocating the regional housing needs to any delegate subregion or subregions, the council of governments or the department will hold at least one public hearing, and may consider requests for revision of the proposed allocation to a subregion. If a proposed revision is rejected, the council of governments shall respond with a written explanation of why the proposed revised share has not been accepted.

(d) If an eligible subregional entity fails to complete the regional housing need allocation process among its member jurisdictions in a manner consistent with this section and with the delegation agreement between the subregion and the council of governments, the allocations to member jurisdictions shall be made by the council of governments, or by the department where there is no council of governments.

SEC. 7. Section 65584.04 is added to the Government Code, to read:

65584.04. (a) At least two years prior to a scheduled revision required by Section 65588, each council of governments, or delegate subregion as applicable, shall develop a proposed methodology for distributing the existing and projected regional housing need to cities, counties, or subregions, where applicable pursuant to this section. The principles of subdivision (d) of Section 65584 shall be considered in development of the methodology.

(b) (1) No more than six months prior to the development of a proposed methodology for distributing the existing and projected housing need, each council of governments shall survey each of its member jurisdictions to request, at a minimum, information regarding the factors listed in subdivision (d) that will allow the development of a methodology based upon the factors established in subdivision (d).

(2) The information shall be obtained in a manner and format that is comparable throughout the region and utilize readily available data to the extent possible.

(3) The information provided by a local government pursuant to this section shall be used, to the extent possible, by the council of governments, or delegate subregion as applicable, as source information for the methodology developed pursuant to this section. The survey shall state that none of the information received may be used as a basis for reducing the total housing need established for the region pursuant to Section 65584.01.

(4) If the council of governments fails to conduct a survey pursuant to this subdivision, a city, county, or city and county may submit information related to the items listed in subdivision (d) prior to the public comment period provided for in subdivision (c).

(c) Public participation and access shall be required in the development of the methodology and in the process of drafting and adoption of the allocation of the regional housing needs. Participation by organizations other than local jurisdictions and councils of governments shall be solicited in a diligent effort to achieve public participation of all economic segments of the community. The proposed methodology, along with any relevant underlying data and assumptions, and an explanation of how information about local government conditions pursuant to subdivision (b) has been used to develop the proposed methodology, and how each of the factors listed in subdivision (d) is incorporated into the methodology, shall be distributed to all cities, counties, any subregions, and members of the public who have made a written request for the proposed methodology. The council of governments, or delegate subregion, as applicable, shall conduct at least one public hearing to receive oral and written comments on the proposed methodology.

(d) To the extent that sufficient data is available from local governments pursuant to subdivision (b) or other sources, each council of governments, or delegate subregion as applicable, shall include the following factors to develop the methodology that

allocates regional housing needs:

(1) Each member jurisdiction's existing jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

(4) The market demand for housing.

(5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.

(6) Any other factors adopted by the council of governments.

(7) The loss of units contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(8) High housing costs burdens.

(9) The housing needs of farmworkers.

(e) The council of governments, or delegate subregion, as applicable, shall explain in writing how each of the factors described in subdivision (d) was incorporated into the methodology and how the methodology is consistent with subdivision (d) of Section 65584. The methodology may include numerical weighting.

(f) Any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits issued by a city or county shall not be a justification for a determination or a reduction in the share of a

city or county of the regional housing need.

(g) In addition to the factors identified pursuant to subdivision (d), the council of governments, or delegate subregion, as applicable, shall identify any existing local, regional, or state incentives, such as a priority for funding or other incentives available to those local governments that are willing to accept a higher share than proposed in the draft allocation to those local governments by the council of governments pursuant to Section 65584.05.

(h) Following the conclusion of the 60-day public comment period described in subdivision (c) on the proposed allocation methodology, and after making any revisions deemed appropriate by the council of governments, or delegate subregion, as applicable, as a result of comments received during the public comment period, each council of governments, or delegate subregion, as applicable, shall adopt a final regional, or subregional, housing need allocation methodology and provide notice of the adoption of the methodology to the jurisdictions within the region, or delegate subregion as applicable, and to the department.

SEC. 8. Section 65584.05 is added to the Government Code, to read:

65584.05. (a) At least one and one-half years prior to the scheduled revision required by Section 65588, each council of governments shall distribute a draft allocation of regional housing needs to each local government and subregion, where applicable, based on the methodology adopted pursuant to Section 65584.04. The draft allocation shall include the underlying data and methodology on which the allocation is based. It is the intent of the Legislature that the draft allocation should be distributed prior to the completion of the update of the applicable regional transportation plan. The draft allocation shall distribute to localities and subregions, if any, within the region the entire regional housing need determined pursuant to Section 65584.01.

(b) Within 60 days following receipt of the draft allocation, a local government that is not part of a subregion, or the subregion, as applicable, may request a revision of its share of the regional housing need in accordance with the factors described in paragraphs (1) to (9), inclusive, of subdivision (d) of Section 65584.04, including any information submitted by the local government to the council of governments pursuant to subdivision (b) of that section. The request for a revised share shall be based upon comparable data available for all affected jurisdictions and accepted planning methodology, and supported by adequate documentation.

(c) Within 60 days after the request submitted pursuant to subdivision (b), the council of governments shall accept the proposed revision, modify its earlier determination, or indicate, based upon the information and methodology described in Section 65584.04, why the proposed revision is inconsistent with the regional housing need.

(d) If the council of governments does not accept the proposed

revised share or modify the revised share to the satisfaction of the requesting party, the local government, or subregion, if applicable, may appeal its draft allocation based upon either or both of the following criteria:

(1) The council of governments failed to adequately consider the information submitted pursuant to subdivision (b) of Section 65584.04, or a significant and unforeseen change in circumstances has occurred in the local jurisdiction that merits a revision of the information submitted pursuant to that subdivision.

(2) The council of governments failed to determine its share of the regional housing need in accordance with the information described in, and the methodology established by, the council of governments pursuant to Section 65584.04.

(e) The council of governments shall conduct public hearings to hear all appeals within 60 days of the date established by the council of governments to file appeals. The city or county, or subregion if applicable, shall be notified within 10 days by certified mail, return receipt requested, of at least one public hearing on its appeal. The date of the hearing shall be at least 30 and not more than 35 days from the date of the notification. Before taking action on an appeal, the council of governments shall consider all comments, recommendations, and available data based on accepted planning methodologies submitted by the appellant. The council of governments' final action on an appeal shall be in writing and shall include information and other evidence explaining how its action is consistent with this article. The council of governments' final action on an appeal may require the council of governments to adjust the allocation of a local government that is not the subject of an appeal.

(f) The council of governments shall issue a proposed final allocation within 45 days of the completion of the 60-day period for hearing appeals. The proposed final allocation plan shall include responses to all comments received on the proposed draft allocation and reasons for any significant revisions included in the final allocation.

(g) In the proposed final allocation plan, the council of governments shall adjust allocations to subregions and to local governments based upon the results of the appeals process specified in this section. If the adjustments total 7 percent or less of the regional housing need determined pursuant to Section 65584.01, then the council of governments shall distribute the adjustments proportionally to all subregions or local governments. If the adjustments total more than 7 percent of the regional housing need, then the council of governments shall develop a methodology to distribute the amount greater than the 7 percent to local governments and subregions. In no event shall the total distribution of housing need equal less than the regional housing need, as determined pursuant to Section 65584.01. Two or more local governments may agree to an alternate distribution of appealed housing allocations between the affected local governments. If two or more local

governments agree to an alternative distribution of appealed housing allocations that maintains the total housing need originally assigned to these communities, then the council of governments shall include the alternative distribution in the final allocation plan.

(h) Within 60 days of the issuance of the proposed final allocation plan pursuant to subdivision (g), each subregion established pursuant to Section 65584.03 shall provide the council of governments with its allocation of regional housing needs within the subregion adopted by the county and the majority of cities within the region with the majority of the population. Allocations agreed to within a subregion may differ from the draft allocations assigned local governments pursuant to this section, but in no event shall the total allocation in the subregion equal less than the total housing need allocated to the subregion pursuant to subdivision (a) of Section 65584.05. If the council of governments finds that the proposed allocation plan submitted by the subregion does not equal the total housing need allocated to the subregion, or if the subregion has not submitted an allocation within 60 days, then the council of governments shall allocate the housing needs to the individual local governments within the subregion to ensure that the total regional housing need is allocated.

(i) Within 45 days of receiving proposed subregional allocations pursuant to subdivision (h), the council of governments shall hold a public hearing to adopt a final allocation plan. The council of governments shall have final authority to determine the distribution of the region's existing and projected housing need as determined pursuant to Section 65584.01. Within 60 days of adoption by the council of governments, the department shall determine whether or not the final allocation plan is consistent with the existing and projected housing need for the region, as determined pursuant to Section 65584.01. The department may revise the determination of the council of governments if necessary to obtain this consistency.

(j) Any authority of the council of governments to review and revise the share of a city or county of the regional housing need under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.

SEC. 9. Section 65584.06 is added to the Government Code, to read:

65584.06. (a) For cities and counties without a council of governments, the department shall determine and distribute the existing and projected housing need, in accordance with Section 65584 and this section. If the department determines that a county or counties, supported by a resolution adopted by the board or boards of supervisors, and a majority of cities within the county or counties representing a majority of the population of the county or counties, possess the capability and resources and agreed to accept the responsibility, with respect to its jurisdiction, for the distribution of the regional housing need, the department shall

delegate this responsibility to the cities and county or counties.

(b) The distribution of regional housing need shall, based upon available data and in consultation with the cities and counties, take into consideration market demand for housing, the distribution of household growth within the county assumed in the regional transportation plan where applicable, employment opportunities and commuting patterns, the availability of suitable sites and public facilities, agreements between a county and cities in a county to direct growth toward incorporated areas of the county, or other considerations as may be requested by the affected cities or counties and agreed to by the department. As part of the allocation of the regional housing need, the department shall provide each city and county with data describing the assumptions and methodology used in calculating its share of the regional housing need.

(c) Within 90 days following the department's determination of a draft distribution of the regional housing need to the cities and the county, a city or county may propose to revise the determination of its share of the regional housing need in accordance with criteria set forth in the draft distribution. The proposed revised share shall be based upon comparable data available for all affected jurisdictions, and accepted planning methodology, and shall be supported by adequate documentation.

(d) (1) Within 60 days after the end of the 90-day time period for the revision by the cities or county, the department shall accept the proposed revision, modify its earlier determination, or indicate why the proposed revision is inconsistent with the regional housing need.

(2) If the department does not accept the proposed revision, then, within 30 days, the city or county may request a public hearing to review the determination.

(3) The city or county shall be notified within 30 days by certified mail, return receipt requested, of at least one public hearing regarding the determination.

(4) The date of the hearing shall be at least 10 but not more than 15 days from the date of the notification.

(5) Before making its final determination, the department shall consider all comments received and shall include a written response to each request for revision received from a city or county.

(e) If the department accepts the proposed revision or modifies its earlier determination, the city or county shall use that share. If the department grants a revised allocation pursuant to subdivision (d), the department shall ensure that the total regional housing need is maintained. The department's final determination shall be in writing and shall include information explaining how its action is consistent with this section. If the department indicates that the proposed revision is inconsistent with the regional housing need, the city or county shall use the share that was originally determined by the department. The department, within its final determination, may adjust the allocation of a city or county that was not the subject of a request for revision of the draft distribution.

(f) The department shall issue a final regional housing need allocation for all cities and counties within 45 days of the completion of the 60-day period.

SEC. 10. Section 65584.07 is added to the Government Code, to read:

65584.07. (a) During the period between adoption of a final regional housing needs allocation until the due date of the housing element update pursuant to Section 65588, the council of governments, or the department, whichever assigned the county's share, shall reduce the share of regional housing needs of a county if all of the following conditions are met:

(1) One or more cities within the county agree to increase its share or their shares in an amount equivalent to the reduction.

(2) The transfer of shares shall only occur between a county and cities within that county.

(3) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.

(4) The council of governments or the department, whichever assigned the county's share, shall approve the proposed reduction, if it determines that the conditions set forth in paragraphs (1), (2), and (3) above have been satisfied. The county and city or cities proposing the transfer shall submit an analysis of the factors and circumstances, with all supporting data, justifying the revision to the council of governments or the department. The council of governments shall submit a copy of its decision regarding the proposed reduction to the department.

(b) After the due date for the housing element update, the council of governments, or the department, whichever assigned the county's share, shall reduce the share of regional housing needs of a county if all of the following conditions are met:

(1) The county and the city or city and county have both updated their housing elements for the current planning period pursuant to Section 65588 and the department has determined that both elements are in substantial compliance with this article.

(2) One or more cities within the county agree to increase its share or their shares in an amount equivalent to the reduction.

(3) The transfer of shares shall only occur between a county and cities within that county.

(4) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.

(5) The council of governments or the department, whichever assigned the county's share, shall approve the proposed reduction, if it determines that the conditions set forth in paragraphs (1), (2), (3), and (4) above have been satisfied. The county and city or cities proposing the transfer shall submit an analysis of the factors and circumstances, with all supporting data, justifying the revision to the council of governments or the department. The council of governments shall submit a copy of its decision regarding the

proposed reduction to the department.

The county and cities which have executed transfers of regional housing need pursuant to this section shall amend their housing elements and submit them to the department for review pursuant to Section 65585.

All materials and data used to justify any revision shall be made available upon request by any interested party within seven days upon payment of reasonable costs of reproduction unless the costs are waived due to economic hardship.

(c) In the event an incorporation of a new city occurs after the council of governments, or the department for areas with no council of governments, has made its final allocation under this section, the city and county may reach a mutually acceptable agreement on a revised determination and report the revision to the council of governments and the department, or to the department for areas with no council of governments. If the affected parties cannot reach a mutually acceptable agreement, then either party may request the council of governments, or the department for areas with no council of governments, to consider the facts, data, and methodology presented by both parties and make the revised determination.

The revised determination shall be made within one year of the incorporation of the new city based upon the methodology described in subdivision (a) and shall reallocate a portion of the affected county's share of regional housing needs to the new city. The revised determination shall neither reduce the total regional housing need nor change the previous allocation of the regional housing needs assigned by the council of governments or the department, where there is no council of governments, to other cities within the affected county.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

~~amended to read:~~

~~65582. As used in this article:~~

~~(a) "Community," "locality," "local government," or "jurisdiction" means a city, city and county, or county.~~

~~(b) "Council of governments" means a single or multicounty council created by a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 1 of Title 1.~~

~~(c) "Department" means the Department of Housing and Community Development.~~

~~(d) "Housing element" or "element" means the housing element of the community's general plan, as required pursuant to this article and subdivision (c) of Section 65302.~~

~~(e) "Existing and projected regional housing need" means a~~

~~reasonable calculation of the demand for housing within the region during the planning period, to be used for regional and local planning purposes.~~

~~(f) "Low- and moderate-income households" means persons and families of low or moderate incomes, as defined by Section 50093 of the Health and Safety Code.~~